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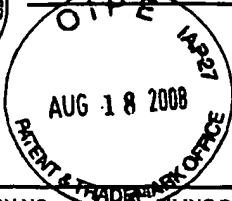
APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,880	12/08/2003	Michael J. Shea	EX-4-COMM	9623
40283	7590	01/21/2009		
MICHAEL J. SHEA 1711 WIND HAVEN WAY VIENNA, VA 22182			EXAMINER SYED, FARHAN M	
			ART UNIT	PAPER NUMBER
			2165	
			MAIL DATE	DELIVERY MODE
			01/21/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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7590 08/11/2008  
MICHAEL J. SHEA  
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VIENNA, VA 22182

EXAMINER

SYED, FARHAN M

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08/11/2008

PAPER

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JUN 24 2008

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PAPER

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<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10728,880	SHEA, MICHAEL J.	
	Examiner	Art Unit	
	Farhan M. Syed	2165	

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 09 October 2007.

2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-45 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-45 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some \* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____ 5) <input type="checkbox"/> Notice of Informal Patent Application 6) <input type="checkbox"/> Other: _____
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**DETAILED ACTION**

1. Claims 1-45 are pending.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 5-11, 13-15, 19-26, and 28-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Reed et al (U.S. Patent No. 5,862,325 and known hereinafter as Reed '325).

As per claims 1, 14, 15, 30, 31, 37, 38, and 45, Reed '325 teaches a system for communicating exerciser-related messages comprising (i.e. *"An automated communications system operates to transfer data, metadata and methods from a provider computer to a consumer computer through a communications network. The transferred information controls the communications relationship, including responses by the consumer computer, updating of information, and processes for future communications. Information which changes in the provider computer is automatically updated in the consumer computer through the communications system in order to maintain continuity of the relationship. The use of metadata and methods further allows for automating may of the actions underlying the communications, including communication acknowledgements and archiving of*

*information. Service objects and partner servers provide specialized data, metadata, and method to providers and consumers to automate many common communications services and transactions useful to both providers and consumers. A combination of the provider and consumer programs and databases allows for additional functionality, including coordination of multiple users for a single database."* The preceding text clearly indicates that a system for communicating messages is the electronic mail and processing e-mail. Communicating exerciser-related messages is merely an intended use of the prior art. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).)(Abstract): a database storing records of exercise activities for a plurality of exercisers (i.e. "Electronic mail (e-mail) systems are another electronic communications system that provides some communications contact persistence. E-mail addresses and messages can be stored and indexed within e-mail programs, or externally in other locations. E-mail rules engines allow for some degree of automated storage or response to certain message contents. However, these rules engines are typically constrained to acting on certain known information about the messages, such as the address of the message provider, or on semantic rules such as keywords which must be guessed by the provider and consumer. There is no common communications frame of reference, i.e., a structured data format and operations methodology, against which both the provider and consumer can operate to filter, classify, and organize messages. The lack of a common frame of reference also severely limits the capability of either the provider or consumer to automatically process the contents of an e-mail message, or to automatically respond to the message besides the capability to automatically address a reply message." The preceding text clearly indicates that non-relational database contains a set of records containing fields of information, which are storing records. The storing records of exercise activities for a plurality of exercisers are merely the intended use of the prior art. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA

1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).)(Column 5, lines 6-22); a processing system generating messages relating to one or more of the exercisers based on the records of exercise activities (i.e. *"Electronic mail (e-mail) systems are another electronic communications system that provides some communications contact persistence. E-mail addresses and messages can be stored and indexed within e-mail programs, or externally in other locations. E-mail rules engines allow for some degree of automated storage or response to certain message contents. However, these rules engines are typically constrained to acting on certain known information about the messages, such as the address of the message provider, or on semantic rules such as keywords which must be guessed by the provider and consumer. There is no common communications frame of reference, i.e., a structured data format and operations methodology, against which both the provider and consumer can operate to filter, classify, and organize messages. The lack of a common frame of reference also severely limits the capability of either the provider or consumer to automatically process the contents of an e-mail message, or to automatically respond to the message besides the capability to automatically address a reply message."* The preceding text clearly indicates that a processing system is the new message processing.)(Column 5, lines 6-22); and a communication network interface communicating the messages over a communication network (i.e. *"Another approach to automating communications and data transfers is shared replicated database systems such as Lotus Notes and Collabra Share. With these systems, information to be communicated is entered via a client program into one or more databases which may reside locally on client computers or on network server computers. These databases are then replicated to other server computers or local client computers throughout the system so that the data can be easily accessed by any other user of the system who needs the information and has the proper access privileges. Access privileges are controlled by one or more system administrators via the system servers. Some of these systems, notably Collabra Share, also allow users to "subscribe" to specific databases. These users can receive an e-mail notification from a database agent monitoring the database when a new entry or a certain condition has been made in that database.*

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*These systems may also employ electronic forms and forms processing languages to structure the data being entered into a database, and to take programmable actions based on the data entered. The architecture of these systems is designed for groups of users to share information related to specific topics, and to automate the transfer of data between different computer applications used by an organization. For this reason the core data structure of the architecture is a subject database or "forum". Each subject database covers a number of related interest topics under which all entries in the database are categorized. All copies of any subject database are synchronized throughout the system when data in any one copy has been changed.*" The preceding text clearly indicates that a communication network interface communicating is transmitting e-mails through a network to a user's computer. An ordinary person skilled in the art understands that in order to transmit data from the network to a computer, the computer must contain a communication network interface.)(Column 7, lines 63-66).

As per claims 5, 19, 33, and 40 Reed '325 teaches a system wherein the messages comprise e-mail messages (i.e. *"Electronic mail (e-mail) systems are another electronic communications system that provides some communications contact persistence. E-mail addresses and messages can be stored and indexed within e-mail programs, or externally in other locations. E-mail rules engines allow for some degree of automated storage or response to certain message contents. However, these rules engines are typically constrained to acting on certain known information about the messages, such as the address of the message provider, or on semantic rules such as keywords which must be guessed by the provider and consumer. There is no common communications frame of reference, i.e., a structured data format and operations methodology, against which both the provider and consumer can operate to filter, classify, and organize messages. The lack of a common frame of reference also severely limits the capability of either the provider or consumer to automatically process the contents of an e-mail message, or to automatically respond to the message besides the capability to automatically address a reply message."* The preceding text clearly indicates that a processing system is the new message processing.)(Column 5, lines 6-22).



As per claims 6 and 20, Reed '325 teaches a system wherein the messages are communicated over the communication network to the one or more exercisers (i.e. *"Electronic mail (e-mail) systems are another electronic communications system that provides some communications contact persistence. E-mail addresses and messages can be stored and indexed within e-mail programs, or externally in other locations. E-mail rules engines allow for some degree of automated storage or response to certain message contents. However, these rules engines are typically constrained to acting on certain known information about the messages, such as the address of the message provider, or on semantic rules such as keywords which must be guessed by the provider and consumer. There is no common communications frame of reference, i.e., a structured data format and operations methodology, against which both the provider and consumer can operate to filter, classify, and organize messages. The lack of a common frame of reference also severely limits the capability of either the provider or consumer to automatically process the contents of an e-mail message, or to automatically respond to the message besides the capability to automatically address a reply message."* The preceding text clearly indicates that a processing system is the new message processing.)(Column 5, lines 6-22).

As per claims 7 and 21, Reed '325 teaches a system wherein the messages are communicated over the communication network to fitness consultants for the one or more exercisers (i.e. *"Electronic mail (e-mail) systems are another electronic communications system that provides some communications contact persistence. E-mail addresses and messages can be stored and indexed within e-mail programs, or externally in other locations. E-mail rules engines allow for some degree of automated storage or response to certain message contents. However, these rules engines are typically constrained to acting on certain known information about the messages, such as the address of the message provider, or on semantic rules such as keywords which must be guessed by the provider and consumer. There is no common communications frame of reference, i.e., a structured data format*

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*and operations methodology, against which both the provider and consumer can operate to filter, classify, and organize messages. The lack of a common frame of reference also severely limits the capability of either the provider or consumer to automatically process the contents of an e-mail message, or to automatically respond to the message besides the capability to automatically address a reply message."*  
The preceding text clearly indicates that a processing system is the new message processing.)(Column 5, lines 6-22).

As per claims 8, 22, 34 and 41, Reed '325 teaches a system wherein the database stores e-mail addresses for the exercisers and the messages comprise e-mail messages communicated over the communication network to the one or more exercisers using the e-mail addresses (i.e. *"Electronic mail (e-mail) systems are another electronic communications system that provides some communications contact persistence. E-mail addresses and messages can be stored and indexed within e-mail programs, or externally in other locations. E-mail rules engines allow for some degree of automated storage or response to certain message contents. However, these rules engines are typically constrained to acting on certain known information about the messages, such as the address of the message provider, or on semantic rules such as keywords which must be guessed by the provider and consumer. There is no common communications frame of reference, i.e., a structured data format and operations methodology, against which both the provider and consumer can operate to filter, classify, and organize messages. The lack of a common frame of reference also severely limits the capability of either the provider or consumer to automatically process the contents of an e-mail message, or to automatically respond to the message besides the capability to automatically address a reply message."* The preceding text clearly indicates that a processing system is the new message processing.)(Column 5, lines 6-22).

As per claims 9 and 23, Reed '325 teaches a system wherein the messages comprise requests for replies from the one or more exercisers regarding their exercise activities (i.e. *"Electronic mail (e-mail) systems are another electronic communications system that provides some communications contact persistence. E-mail addresses and messages can be stored and indexed within e-mail programs, or externally in other locations. E-mail rules engines allow for some degree of automated storage or response to certain message contents. However, these rules engines are typically constrained to acting on certain known information about the messages, such as the address of the message provider, or on semantic rules such as keywords which must be guessed by the provider and consumer. There is no common communications frame of reference, i.e., a structured data format and operations methodology, against which both the provider and consumer can operate to filter, classify, and organize messages. The lack of a common frame of reference also severely limits the capability of either the provider or consumer to automatically process the contents of an e-mail message, or to automatically respond to the message besides the capability to automatically address a reply message."*(Column 5, lines 6-22).

As per claims 10 and 24, Reed '325 teaches a system wherein the processing system updates the records of exercise activities of replying exercisers based on their replies (i.e. *"Communications objects represent a transfer of communications intelligence, in the form of data, metadata, and instructions, from a provider to a consumer who wishes to form a communications relationship with that provider. Once the communications object has been exchanged, further communications between the provider and consumer can carry greater intelligence because they can be be originated and received as transmissions between these two communications objects. Although these messages can be structured in any form, in a preferred embodiment they are simply a special communications object type called a message object 110. This means they can be generated, encoded, transmitted, received, and processed in the same fashion as any other communications object. The only*

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*difference is that the generation or receipt of a message object may not result in an update to the sending or receiving communications object, but rather the execution of one or more methods at the sending or receiving program, and optionally changes to other objects or object components in the sending or receiving databases. A communications object update may be considered a special form of message object which includes changes to the receiving communications object.*")(Column 42, lines 40-62).

As per claims 11 and 26, Reed '325 teaches a system wherein the processing system generates the messages automatically (i.e. "An automated communications system operates to transfer data, metadata and methods from a provider computer to a consumer computer through a communications network. The transferred information controls the communications relationship, including responses by the consumer computer, updating of information, and processes for future communications. Information which changes in the provider computer is automatically updated in the consumer computer through the communications system in order to maintain continuity of the relationship. The use of metadata and methods further allows for automating many of the actions underlying the communications, including communication acknowledgements and archiving of information. Service objects and partner servers provide specialized data, metadata, and method to providers and consumers to automate many common communications services and transactions useful to both providers and consumers. A combination of the provider and consumer programs and databases allows for additional functionality, including coordination of multiple users for a single database." The preceding text clearly indicates that a system for communicating messages is the electronic mail and processing e-mail. Communicating exerciser-related messages is merely an intended use of the prior art. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1983).)(Abstract).

As per claims 13, 28, 36, and 43, Reed '325 teaches a system wherein the database comprises one or more portions that are remotely accessible to the exercisers (i.e. "FIG. 9D shows the internal structure of the Mass Storage Server (909). As shown in FIG. 9D, a Mass Storage Interface 951 provides high level methods that will be called by the Object Insertion Module (945) through RMI (Remote Method Invocation) to store Message Objects. The Mass Storage Interface 951 is the responsible for the actual communication with the Mass Storage Server, also referred to as the Database(953). The Mass Storage (953) is the actual location for storing and manipulating users' Messages, Correspondents, and Topic information. See FIG. 9-F for details on the entity relationship diagram of the database.") (Column 12, lines 3-13).

As per claims 25, 29, and 44, Reed '325 teaches a storage medium storing instructions that are executable to perform the method (i.e. "Other element composite types are useful for the storage, transmission, and display of communications content between the provider and consumer. Elements of this type include text blocks, graphics, and HTML. HTML elements are especially useful in the preferred embodiment as they can contain standard HTML documents which the consumer program 22 can pass directly, or with minor modifications, to the Web browser 50 for display.") (Column 8, lines 1-10).

As per claim 35, Reed '325 teaches the system wherein the workout messages comprise workouts for one or more particular days (column 5, lines 4-22).

As per claim 39, Reed '325 teaches a method further comprising: receiving reply messages from the one or more exercisers regarding the workouts (i.e. "Various computer-based systems have been created to provide mechanisms for communicating information. The Internet

*and World Wide Web provide a network of a large number of information sources, providing a voluminous amount of information. Computer programs exist which can be executed on Internet-connected computers to search these sources to obtain desired information. Additionally, through the medium of hypertext, providers of World Wide Web pages can create links in their pages between items of related information which can significantly aid consumers in finding desired information. However, the links to the information source are neither dynamic nor persistent; in the sense that they do not provide new or updated information once the consumer has found a topic of interest. (Column 3, lines 12-13); and updating the data in the database based on the received reply messages (i.e. "Various computer-based systems have been created to provide mechanisms for communicating information. The Internet and World Wide Web provide a network of a large number of information sources, providing a voluminous amount of information. Computer programs exist which can be executed on Internet-connected computers to search these sources to obtain desired information. Additionally, through the medium of hypertext, providers of World Wide Web pages can create links in their pages between items of related information which can significantly aid consumers in finding desired information. However, the links to the information source are neither dynamic nor persistent; in the sense that they do not provide new or updated information once the consumer has found a topic of interest. (Column 3, lines 12-13).*

**Claim Rejections - 35 USC § 103**

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4, 12, 16-18, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al (U.S. Patent No. 5,862,325 and known hereinafter as

Reed '325) in view of Reed et al (U.S. Patent No. 6,044,205 and known hereinafter as Reed '205).

As per claims 2 and 16, Reed '325 does not explicitly teach a system wherein the messages are generated based on when the exercisers performed exercise activities.

Reed '205 teaches a system wherein the messages are generated based on when the exercisers performed exercise activities (i.e. *"Additionally, receipt and storage of the new or updated information can trigger other actions, such as automatically forwarding the information to another consumer, exchanging information with the consumer database 21, sending an automated response to the provider, or sending a message to another software program on the consumer's desktop. Again, this invention provides a means for such actions to be cooperatively controlled by both the provider and the consumer through the use of object methods, which is discussed below."*)(Column 10, lines 27-38).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Reed '325 with the teachings of Reed '205 to include a system wherein the messages are generated based on when the exercisers performed exercise activities with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '205, column 1, lines 10-12).

As per claims 3 and 17, Reed '325 does not explicitly teach a system wherein the messages are generated based on whether the exercisers have performed exercise activities for a certain period of time.

Reed '205 teaches a system wherein the messages are generated based on whether the exercisers have performed exercise activities for a certain period of time (i.e. *"The triggering of update methods is typically controlled by a system event in the consumer program 22. Alternatively, it could be triggered by the receipt of an update trigger message from the provider program 12. The timing of the system event is controlled by one or more preferences stored in the consumers global preferences instance (114, FIG. 3). Thus, the system event could happen upon startup of the consumer program 22, at a periodic interval during the programs operation, at a specific time of day, etc. The system event could also be dependent on monitoring the system activity level of the consumer computer 2, or on other system or environment variables."*)(Column 38, lines 37-48).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Reed '325 with the teachings of Reed '205 to include a system wherein the messages are generated based on whether the exercisers have performed exercise activities for a certain period of time with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '205, column 1, lines 10-12).

As per claims 4 and 18, Reed '325 does not explicitly teach a system wherein the messages are generated based on physiological data for the exercisers measured during exercise activities.



Reed '205 teaches a system wherein the messages are generated based on physiological data for the exercisers measured during exercise activities (i.e. *"Additionally, receipt and storage of the new or updated information can trigger other actions, such as automatically forwarding the information to another consumer, exchanging information with the consumer database 21, sending an automated response to the provider, or sending a message to another software program on the consumer's desktop. Again, this invention provides a means for such actions to be cooperatively controlled by both the provider and the consumer through the use of object methods, which is discussed below."*) (Column 10, lines 27-38).

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Reed '325 with the teachings of Reed '205 to include a system wherein the messages are generated based on physiological data for the exercisers measured during exercise activities with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '205, column 1, lines 10-12).

As per claims 12 and 27, Reed '325 does not explicitly teach a system wherein the processing system generates the messages automatically on a periodic basis.

Reed '205 teaches a system wherein the processing system generates the messages automatically on a periodic basis (i.e. *"The triggering of update methods is typically controlled by a system event in the consumer program 22. Alternatively, it could be triggered by the receipt of an update trigger message from the provider program 12. The timing of the system event is controlled by one or more preferences stored in the consumers global preferences instance (114, FIG. 3). Thus, the system event could happen upon startup of the consumer program 22, at a periodic interval*

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*during the programs operation, at a specific time of day, etc. The system event could also be dependent on monitoring the system activity level of the consumer computer 2, or on other system or environment variables." (Column 38, lines 37-48).*

It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Reed '325 with the teachings of Reed '205 to include a system wherein the processing system generates the messages automatically on a periodic basis with the motivation to coordinate the transfer and content of data, metadata, and instructions between databases in order to simplify, automate, and increase the intelligence of communications (Reed '205, column 1, lines 10-12).

#### ***Response to Remarks/Argument***

6. Applicant's arguments filed 09 October 2007 have been fully considered but they are not persuasive for the reasons set forth below.

Applicant argues:

(1) "Reed et al '325 clearly does not contain any disclosure whatsoever regarding exerciser-related messages, much less a database and a processing system as claimed."

The Examiner disagrees. Reed et al '325 teaches exerciser-related messages (an Exerciser is an apparatus, as defined by the Applicant's specification, see paragraph [0007], that generates exerciser-related messages, the Applicant concedes that exercise-related messages are electronic in the Applicant's specification, see at least paragraphs [0037]-[0042], [0051, and [0060].

similarly, a computer is an apparatus that generates electronic messages and therefore the Examiner believes that an apparatus is generating some form of messages. Furthermore, communicating exerciser-related messages is merely an intended use of the prior art. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963)(Column 5, lines 4-22), much less a database (see Figure 5, System ID database, Provider database, and Consumer database are all illustrations of a database.) and a processing system (i.e. "data processing and electronics communication systems")(column 2, lines 55-60).

(2) "Reed et al '325 reveal no mention of a processor system that generates messages based on records of exercise activities."

The Examiner disagrees. Reed teaches a processor system (i.e. "data processing and electronics communication systems")(column 2, lines 55-60) that generates messages (i.e. electronic messages)(column 5, lines 4-22) based on records of exercise activities (i.e. data)(column 5, lines 4-60; see also Figures 5, 8, and 9).

(3) "The office action improperly treats claims 31, 37, 38, and 45 collectively with claims 1, 14, 15, and 30. Claims 31, 37, 38, and 45 are directed to communicating workout messages and recite among other things, generating workout messages for one or more exercises based on data regarding the exercisers stored in a database."

The Examiner disagrees. The term "workout" and "exercise" are synonyms in the U.S. English language and are interchangeable with one another without losing the

essence of the meaning for each word. The Examiner refers to <http://thesaurus.reference.com/browse/exercise> for more information on the terms workout and exercise. Therefore, the Examiner believes the rejection is equally applicable to all claims in the group.

Hence, the Applicant's arguments do not distinguish over the claimed invention over the prior art of record.

Any other arguments by the applicant are either more limiting than the claimed language or completely irrelevant.

#### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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**Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Farhan M. Syed whose telephone number is 571-272-7191. The examiner can normally be reached on 8:30AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christian Chace can be reached on 571-272-4190. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

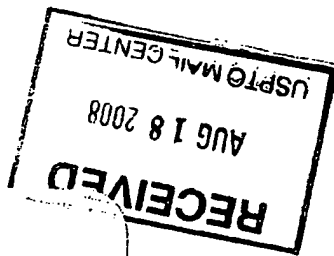
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/FMS

  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/728,880

12/08/2003

Michael J. Shea

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7590 08/11/2008  
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EXAMINER
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SYED, FARHAN M .

ART UNIT	PAPER NUMBER
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2165

MAIL DATE	DELIVERY MODE
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08/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.